barrell
TREE CONSULTANCY

In search of the perfect report

Article for Arboriculture Australia's The Bark (Winter 2015)

BTC/108/2015

barrell
TREE CONSULTANCY

In search of the perfect report

Article for Arboriculture Australia's The Bark (Winter 2015)

Writing legal reports is probably the most challenging aspect of all professional practice and very few ever manage to truly master it. In addition to requiring the highest level of technical expertise in your chosen field, effective writing also requires a deep understanding of the psychology of communication, much of which is more about an individual's natural ability to interact with other people rather than any specific discipline that can be discovered from the classroom. And, if that wasn't enough, integrating these intuitive and academic skills to create an effective report requires practical experience, and lots of it.

In this article, Jeremy Barrell, one of the UK's most experienced expert witnesses, reveals how he approaches legal writing and explains why the perfect report is so elusive. If you have aspirations to improve the way you write, then here are some small practical tips that could make a big difference to your career.

Part I: Managing the writing framework

Practical experience matters!

Writing is a very personal means of expression, and what works for one person may not benefit another in the same way. There are many easy-to-access references setting out the mechanics of grammar and the detail of how to write effectively, but to explore those aspects is not the purpose of this article. Instead, I will focus on the practicalities of what I do, from seeking work, to instruction, to report delivery, and then defending that document under the toughest of interrogations, in the courtroom cross-examination.

Experience really does matter; 'the more you have, the better you will be' has held true for me and that is likely to be the same for most others too. Although I write a lot now, that is not how I started professional life; I was a practical person working every day with trees, and writing very much evolved as a necessity for developing that business. I moved from contracting to solely relying on consultancy income in 1995, which meant I had to learn to write quickly or be out of business. In those early days, the bulk of the reports were mortgage/insurance orientated, so primarily about managing the risk to structures from trees. Not surprisingly, this led to my first legal reports, which were subsidence related (Subsidence is the movement of structures caused by ground movements, which can be due to trees, as well as other many other factors), but I also started getting instructions relating to accidents at work because of my contracting background. However, by 2005, I hadn't commercially climbed trees for 10 years, practical arboriculture had moved on in leaps and bounds, and it became increasingly obvious that accidents at work were becoming beyond my area of expertise, so I stopped doing them. Around the same time, I was rapidly losing enthusiasm for subsidence cases because the

©2015 Jeremy Barrell. All rights reserved

courts seemed to favour the claimants over the trees every time, and I gave them up as well. Since then, I have concentrated on cases dealing with harm from tree failures and that is now the bulk of my writing work. The majority of these are civil cases because they are the commonest types of legal actions, but I have been involved with two criminal cases and two inquests, which are relatively rare by comparison.

This background is important because it represents the best part of 20 years of experience, which has revealed some fundamental truths about writing:

- First, unless you are a natural, and I was not, then there is no quick route to getting it right. For the bulk of people, an expectation to sit down and spend a few years learning to write is simply not going to deliver; this is a long term aspiration and there is no quick fix.

- Second, as an expert working within an essentially legal framework, you are going to be seriously vulnerable to criticism if you don't practice what you preach, i.e. you practically do what you talk about. Claiming to be an expert implies a thorough understanding of your subject, and the reality is that cannot be pulled off without considerable practical experience.

- Finally, the legal framework is not peripheral to your work, it is central, and it can throw up some surprises. In the field of tree risk management, there is a common perception that calculating or estimating the level of risk is of primary importance, to the extent that much of the sector is preoccupied with how to do it. A handful of court appearances, a few hundred reports and nearly two decades of thinking about it has led me to conclude that it is impossible to do reliably and is effectively irrelevant in the courtroom. The courts seem to be much more interested in whether the harm arising from a tree failure was foreseeable and what the duty holder did about it, i.e. was the response reasonable and proportionate in all the circumstances.

It is quite right that experts and specialists should know about the detail of their work, but that in isolation is not enough to be an effective expert witness. Distilling that complexity into simple explanations and communicating those ideas to non-specialists is where the skill really lies. The problem for arborists is that achieving this requires a full awareness of the wider legal and social framework that the detail sits within. In short, the most successful expert witnesses have a good grip on the wider context, as well as knowing the detail about trees.

Getting started

It would be unrealistic to decide one day that you wanted to work as an expert witness and then expect to secure a work supply in the conventional way of advertising what you

©2015 Jeremy Barrell. All rights reserved

do. Being on lists and placing adverts may provide a dribble of work, but not nearly enough to survive on, and I have doubts about whether it even covers the costs! There is no simple solution to getting enough work; it's subtle and no one single element of a promotional strategy seems to stand out as being important above all else. Instead, everything matters, and the better you are at all the little things, the better chance you have at succeeding in the overall task. I always had a simple promotional objective, from contracting in the past, through to consultancy now. If a consumer wants a service of any kind, it is good if they find your name from a recommendation, it is a real result if they find it from two separate sources and it is the jackpot if they find it from three different and independent directions. Although it may seem an unrealistic expectation, our objective is that every time a consumer wants the service we offer, no matter where they go to find it, our name is consistently at the top of the list. Of course, whether we achieve that and how we do it is our business, but that is the objective.

An enquiry can come as an exploratory phone call to discuss a case or simply be a mail delivery of a legal bundle with an instruction to get on with it. Either way, the protocols are the same, with the first priority being to establish whether there is a conflict of interest. In broad terms, a conflict of interest occurs when an individual or organization is involved in multiple interests, one of which could *possibly* corrupt the motivation for an act in the other. In practical terms, that translates to 'does knowledge you already have give you an unfair advantage', or more importantly could there be a perception that you have an unfair advantage, if you take the work. Knowing personally the parties in a case, acting or having acted for other parties in the case or even having discussed the case with a party in it are all ways that conflicts of interest can arise. On the phone, the first question must be to get the names of the parties and the location, to make sure that our Practice is not already involved in the case. If a bundle is mailed, our admin staff open it first and identify those details before I have sight of it. By even reading a letter of instruction, an insight into the strengths and weaknesses of a case could be gleaned, and if you are already instructed by another party on the same case, then even the perception that you had such knowledge could compromise your position later in proceedings. The second point to establish is whether the work is within my area of expertise, i.e. in my case, harm arising from tree failures, and quite often it is not. It is only if there is no conflict of interest and the issues are within my expertise that the focus moves on to fees.

Money matters and lawyers can be the slipperiest of the lot when it comes to paying up, so you need to get this right if you want to avoid losing out. For each and every case, we have a specific contract document with detailed terms and conditions that are posted as hard copies to the instructing lawyer. We will not release any work until the signed hard copy of the agreement is back in our files, and there has never been an exception to this during our trading. The proof that this works for us is that we have never failed to get full payment for every legal case we have ever done. Of course, this runs parallel with a

©2015 Jeremy Barrell. All rights reserved

rigorous debt collection policy and documented detailed time records for every minute spent on the case. We do not compromise on this; the client has to sign before we release anything, and pay up on time, or recovery proceedings will start immediately. A client that does not pay is a client that we do not want again, so we do not hold back!

Collecting and managing relevant information

The reality of many tree failure cases is that they do not progress to formal legal proceedings until some considerable time after the event, which in some instances can run to a number of years. Almost invariably, with such a lapse of time, the tree or tree-part that failed is long lost and there is nothing left on site but a space where the tree once stood. Under such circumstances, '*Why bother with a site visit?*' and '*Is it really necessary?*' are common questions asked by instructing lawyers, keen on keeping costs to a minimum. The response is that a site visit is absolutely essential and I rarely take on cases where one is not agreed. When a tree fails, the immediate surroundings and specific circumstances are always a material consideration in assessing whether harm was reasonably foreseeable, and the only way to reliably get that context is to visit. In addition to the health and structural issues of the actual tree, matters such as exposure to wind, recent loss of shelter, recent root disturbance, failure patterns in nearby trees and ground conditions, can all have a bearing on why a failure occurred. The default for me is always to visit, even on the lowest value cases or if the tree has gone, and it would be very unusual not to do so.

It is easy to get carried away with being an expert and focus on the detail at the expense of the wider context, and detailed investigations of tree parts that failed is a common area for making that mistake. The reality-check is that the courts rarely seem to be interested in what sort of fungus caused the failure, or the ratio of sound wood to decayed wood in a cross-section, or the retrospective application of this or that method of assessing the level of risk. What seems to be much more important is whether the cause of failure would have been discoverable before the event, and the starting point for that aspect of management in the English legal framework, is as set out in the HSE SIM, is a "*quick visual check*" (see explanation in panel). What could be seen by looking from ground level is what matters, and although detail of what could not be seen may be of passing interest, it is unlikely to influence any judgment. The only exception to that would be if there were discoverable visual indications of a problem that would have triggered more detailed investigations, in which case it would be prudent to establish what such investigations would have been likely to discover. However, in the bulk of situations, my experience is that there is no need for anything more than recording dimensions and features that would have been visible from a ground based inspection.

More often than not, the only evidence of tree condition and the detail of the failure is in the form of photographs, and their interpretation can often dictate the course of a case.

©2015 Jeremy Barrell. All rights reserved

Indeed, two of my recent cases have featured on TV reports of accidents, so images can extend to high quality video footage as well. In the absence of the actual tree or part that failed, images have the potential to be extremely helpful for exploring detail well after the actual event. Considering how pivotal images can be, it is surprising how often the tree expert gets incomplete sets of poor quality photocopies, and yet it is almost normal rather than the exception. The experienced expert will always ask for good quality copies and always remind the instructing lawyers to request in writing from the other side that all images of the event are disclosed. A more recent evolution of using images to assist expert analysis is to visit the location on Google, with Streetview often providing quite detailed views of roadside trees before the failure.

Legal proceedings always have a strong focus on documents, sometimes running into thousands of pages, and managing such vast amounts of paper is a headache. This is often compounded by them being sent in dribs and drabs, without proper referencing, pages sometime duplicated or missing, and even the odd word being changed without any indication! Lawyers tend to leave all this to their administrative support, which is probably the root cause of the problem, because to get document management right takes a lot of time and brainpower. It may be mundane to read every page and makes sure it is stored with the date received and the number of pages meticulously catalogued, but being organised to this level is a core skill of effective experts. Invariably, the lawyers don't do it, so you have to, and experts who pay very careful attention to this detail will be the ones that find that critical sentence or even a single word that can make the difference between winning and losing.

Part II: The mechanics of writing

Writing the report

In the UK and probably the bulk of other jurisdictions, the ultimate purpose of a legal report is to assist the court in understanding matters that are beyond its expertise, and it must be written for the court, not the entity paying for the service. It is a clear duty of the report-writer to discharge that task with competence, due care, integrity, independence and impartiality, and to present an objective and balanced position to assist the court in making its decision on the matter in dispute. These are onerous constraints, but this is the framework that all legal reports must be constructed within. Indeed, all experts must be ever-mindful of this rigid duty in the process of evolving opinions and then presenting them as written reports. Throughout the writing phase, these requirements should be at the forefront of your thinking, setting the mental framework for every aspect of the exercise.

Legal cases are invariably complicated and that takes clear thinking to understand, assess and analyse. No doubt, there are many ways to achieve this, and the approach is bound

©2015 Jeremy Barrell. All rights reserved

to vary with each individual, but here are a few ideas that seem to have assisted me in improving my writing. As preparation, I always start by scanning the documents to give me a quick overview, which seems to help establish a rough framework of the issues very early on. I highlight matters that seem important, usually write short notes on the page near them and then tab the page so that I can easily find it again. All this is before the site visit, but I still take the full papers when visiting in case something crops up that I missed in the scan. During this period, I start to think about and locate technical references that I think may be useful in clarifying the issues that begin to emerge. I very rarely rely on books and publications, but they can provide useful technical support for an experience based opinion, so it is often helpful to have copies and refer to them if they add weight to an opinion.

The writing phase is quite intense; it has to be to understand the complication and to then distil that down into the basic issues to be addressed. An hour here or there does not seem to work well for analysing so much detail and I find I have to allow whole days. Furthermore, it is best that they are consecutive until the report is written, to draft at least. Most reports take about three days, but some can take up to five days to finish. A lot of that time is just reading and thinking, which is what it takes to tease out the issues and explore original ways of explaining them in a simple and concise way.

My mind processes complexity much better in the morning, and so I reserve that time specifically for the hard thinking, with the afternoons usually spent on the more mundane, but essential, admin tasks such as referencing and populating appendices with lists of documents and scans of material that the analysis relies on. My personal experience is that the point of waking from sleep is a moment of unusual clarity and so trying to promote a particularly taxing problem to the forefront of my mind at that time can pay big dividends. Even better, dreaming can unlock elusive solutions, but that is much more challenging to engineer! I make sure that I have no distractions, so the phone is off, along with emails, and I almost become a recluse for the time it takes to write it. The task dominates my thinking, from when I get up to when I fall asleep. On average, every 60–90 minutes I take a break and do something completely unrelated to the work for 5–10 minutes; so I walk around, do something in the garden or around the house (I don't write in our office because there are too many distractions!). The most effective of these mundane activities take your mind off the issues and give you a break, but do not require much concentration, so they do not disruptively distract you from the overarching task in hand. This is a personal formula, and each individual will find variations that work best for them, but this approach consistently works for me. It allows me to see connections, discover anomalies and focus on issues that the conventional way of working does not seem to deliver as effectively.

©2015 Jeremy Barrell. All rights reserved

One of the most challenging aspects of writing is to remain objective and balanced in your analysis of the issues. It requires constant and intense attention, and should never be neglected in the writing process. Indeed, one of the most effective areas that cross-examining counsel can discredit an expert is to allege, and then prove, that the expert has taken a biased position, has been unduly influenced by the instructing lawyer/client and therefore fallen foul of the core qualities required of experts. I regularly use a couple of mental tests to ensure that I do not trip up on this fundamental requirement. The first is to imagine that I was acting for the opposing party and just double-check in my mind that the opinion I offer for my client would be the same opinion I would offer if I was on the other side. The second is to imagine that I had the ultimate expert (this is a theoretical person that I have not yet met!) opposite me attempting to discredit the opinion I was proposing. If I feel confident that I could defend my position under that most intense level of scrutiny, then that is what I write down; if not, then I keep rewording the opinion until it passes that test. In practical terms, I always attempt to demonstrate balance in my reports by making sure that I also discuss less favourable aspects to my client's case as well as the obvious need to explain the strengths.

I find it very difficult, and actually unnecessary, to remember every detail of the guidance on how experts should conduct themselves and the precise wording in the multitude of technical references that exist. Instead, over the years, I have accumulated a set of core documents and extracts that I find are very useful to have near me when I write. I have bound them into a folder to keep them altogether and right next to me, which helps me check any point as it arises. It includes the most recent written judgments on tree failure cases, the Health & Safety Executive ("HSE") Sector Information Minute ("SIM"), the Civil Justice Council protocol for instructing experts, the Civil Procedure Rules ("CPR") guidance for experts (see panel on CPR Part 35) and the most frequently required extracts from technical references. Of course, these particular documents are directly relevant to me in England, but the principles they set out have a universal application, so you will need to identify those that are important to you and begin to compile your own customised reference booklet. It sounds simple, but often the most useful tips are that obvious!

Reports always take a huge amount of effort to write and it is frequently disappointing when they are not read in their entirety. But, unfortunately, that is the reality in many instances; there is simply not enough time for the decision-maker to read all the documents, and the wise expert will allow for that in the way the report is constructed and presented. In this context, the summary is probably the most important part of the report and yet there is a tendency to treat its preparation as a last-minute annoyance that can be thrown together once all the main work is done. Nothing could be further from the reality; quite often, all that will be read is the summary, which obviously elevates it up the list of priorities to get right, so this really matters. There is a structured and

©2015 Jeremy Barrell. All rights reserved

effective way of doing this, but to have the necessary depth, it has to start with a very basic skill – storytelling!

Obvious components of a good story are it has to be engaging, easy to follow, easy to understand, not too long and not too boring, with an obvious start, middle and end, and all the parts must be logically connected. At first glance, such attributes seem just too simple to matter, but they do, and writers that reproduce those qualities in their work always stand out from the crowd. Simple rules at the very start of writing can greatly assist the construction of the summary at the end of the process, so here are a few tips:

- **It all starts with structure:** Experts know about detail and wanting to get all that knowledge down on paper is an almost instinctive tendency. Of course, the detail is important, because it is the guts of the work. However, the framework that it sits in matters equally as much because if that is wrong, then communicating the story falls apart. A great analogy is to think of writing each bit of detail on a separate scrap of paper, throwing them all up in the air and putting them together in the order they fall. All the bits you need are there, but not much of it is in the right order and the reader ends up more confused than enlightened, even though they have all the parts! The order in which information is presented matters and yet it is a common point of failure. Almost without exception, the key to effectively communicating the analysis of any problem is to work first on the structural framework, and use that to hang the detail on. Although it may seem intuitively right to start with the detail, experience will prove it is not, and adopting that approach is the route to frequent failures. Forming information into main groups and then dividing each of those into sub-groups and then dividing each of them into paragraphs, and then into sentences and finally into the words is a framework for success. It is an extremely powerful approach, if used properly.
- **… followed very closely with words:** Every word matters; constantly cut words that are not necessary because too many words are a burden for the reader to process and often cloud comprehension. Similarly, always make sure the correct words are used. A common example of words being used incorrectly is to describe a house as a property; in most instances, the property is the extent of the ownership, which usually includes a garden and parking, and the house is just one part of that ownership. Another is to call woundwood callus; they are not even remotely the same and they are not interchangeable. Describing a tree crown as 'unbalanced' is common and yet the very word has an implicit negative connotation, i.e. that something is wrong or not quite right; replacing 'unbalanced' with 'asymmetrical' is often more appropriate. Imprecision damages professionalism and being precise about every detail matters in a legal context.

©2015 Jeremy Barrell. All rights reserved

- **… and then sentences:** The words group together into sentences, which in turn group together into paragraphs. There are countless ways of construction, which are always matters of personal preference, but here are a few pointers that seem to help me. Ideally, each sentence should be short enough for the reader to easily remember the beginning by the time they get to the end. Sounds simple, but not many are, so it needs careful consideration. Each sentence should deal with one discrete idea or piece of information and, as soon as it moves beyond that, it is probably time to think about splitting it. Apart from the first sentence in a paragraph, which should set the scene or provide a clue for what is to come, each sentence should have an obvious connection to the previous and lead on to the next, with the last sentence acting as a summary for the preceding discussion. Linking the idea in one sentence to the progression of that idea in the next sentence can be greatly assisted by using joining words or phrases such as "consequently", "therefore", "additionally", "it follows that", "in that context", etc. Similarly, punctuation is a very useful mechanism for assisting the readers, and making text easier for readers to comprehend is an essential component of successful writing. Again, it is a matter of personal preference, but a very useful test is that if a reader has to read a sentence again to understand it, then the writer has failed to communicate effectively.
- **… and then paragraphs:** A paragraph is a group of sentences that introduces an idea or issue, hosts the discussion about it and then concludes with the result of those discussions. Each should strictly only deal with one issue and if that expands into multiple components, then it is probably time to split it. A useful way to test this is to try to summarise the content into a single word or short phrase to encapsulate the main idea. If that cannot be done obviously and easily, then it probably needs splitting. As a very general rule, paragraphs should be shorter rather than longer and although some may extend beyond 10–15 sentences, the aim should be to keep the majority below this size. Equally as damaging as excessive length is treating each sentence as a single paragraph; it disrupts the flow of the text and often creates a sense of desperation from the writer to pad out deficient content. As with sentences, each paragraph should logically follow on from the previous and naturally lead into the next, with each small and individual element neatly fitting together to build the wider document.

The objective of all these structural subtleties is to provide a seamless reader experience from start to finish; to tell the story where the focus of the reader is on the content and how it all fits together to reach an obvious conclusion, without any conscious appreciation of how the structure has facilitated that comprehension. Like a good film or book, the ultimate report will be over before you know it, it all made perfect sense and you can't wait for the next one!

©2015 Jeremy Barrell. All rights reserved

To bring this full-circle, how does adopting these writing principles assist in the production of the summary, which irrespective of all your writing skills, may be the only part of the report that is read? The secret lies within the detail of the structure and specifically in the construction of each paragraph with the summary sentence at the end. In principle, if you rigorously adhere to these rules, then extracting the summary sentence of each paragraph and regurgitating them in the order in which they appear should produce a summary of all the ideas that have linked together to create the reasoning running through the report. Grouping the summary sentences from each section of the report into separate paragraphs of the summary is a neat way of ensuring it perfectly mirrors the structure of the report. Of course, some tweaking of the precise wording is always necessary, but this really does work.

A very effective adaptation of this approach can be applied to legal reports, which, in England, must have a summary to comply with the Civil Procedure Rules. I set the scene in the opening paragraphs of the summary by dealing first with what I was asked to do, second by explaining the circumstances of the case and third by describing what I did. All this should be short and to the point, so it is quick to read and easy to understand, providing the lead-in to the most important part of the whole process, your opinions. In the analysis part of the report, I identify all the separate issues that need to be explored and explain the detail of my reasoning. This should all work towards the final paragraph of each subsection that is the distillation of my opinion for that issue. This mini-summary for each subsection must be concise, and formed preferably as one or two sentences, which I underline to add emphasis and specifically identify as my opinion. Each of these mini-summaries can then be extracted in order and compiled to form the rest of the summary at the front of the report. If the whole report is not read, this in-depth approach guarantees that every key point you want to make is right in front of the decision-maker in the most prominent position.

Finishing

Experts know a lot about detail, which is why they are specialists in the first place, but with that focus comes a tendency to miss the wider perspective. Risk management theory focusing on assessing the level of risk is a great example; the experts have become so obsessed with the detail of how to quantify the level of risk that they have completely missed the rather important fact that it is not necessary to do it at all! A common difficulty for many professionals, and specifically those involved with trees, is that they often work alone, without the opportunity to pass ideas by colleagues with a similar level of expertise and knowledge. This makes it all too easy to become overly focused on an inappropriate perspective and not even realise it has happened. One way to deal with this is to regularly compare the ideas and analysis you write with other ways of looking at the same or a similar problem; a process called benchmarking or reality-checking.

©2015 Jeremy Barrell. All rights reserved

It is always good to talk complex ideas and concepts through with other people, but if that luxury is not available, then there are a few psychological and physical mechanisms to help reduce the impact of this academic isolation. In the broadest sense, it is important to think through an idea to its ultimate conclusion and see if it still makes sense beyond the specific set of circumstances being considered. For example, perhaps a roadside tree branch that failed was covered in ivy and, had that ivy been removed, then the defect that caused the failure would have been discovered. Such a scenario could easily lead to a conclusion that the ivy should have been removed, leading to liability for the duty holder. Possibly a reasonable conclusion on a local level, but apply that to the thousands of miles of roads and the millions of trees that could be covered in ivy, and suddenly it is not so reasonable. In fact, it would be completely unworkable to even suggest that all ivy covered trees should have it removed. A sensible local idea that simply does not stack up in a wider context, but not that easy to see without building in a reality-check to the thought process.

On a practical level, so much effort goes into the writing of a report that it is tempting to think that when the last word is written, it is done, but it's not! The final hurdle of the writing phase is the least obvious, but where the greatest care is needed; checking! All the good work and careful analysis can come to nothing if the final document is not meticulously checked. Even the smallest errors and inconsistencies that may seem individually unimportant can accumulate to fatally undermine the credibility of the document and the author. The more errors there are, the worse it gets, and the relationship is exponential, with a cliff beyond which there is no realistic recovery. To thoroughly check is not that hard and there are plenty of tricks to assist in that process. The challenge is to elevate that requirement to a mindset, which very few ever manage to achieve.

If it gets to court

It is very unusual for cases to progress to a court hearing; I am instructed on about 10–12 cases a year and only about one of those ends up in a court appearance, so it is a rare occurrence. A direct consequence of this is that very few reports are ever seriously challenged through the probing and dissection that occurs in cross-examination. This lack of routine reality-checking of report content can lead to complacency in the rigor of writing, which has undoubtedly contributed to a slippage in expert standards. Most recently in England, this has been evidenced by a series of written judgments where judges have been highly critical of tree experts who have not met an appropriate level of professionalism.

Taking a step back from the detail of writing and the courtroom, expert reports are initially a negotiating tool for the lawyers from both sides to work out the merits of the case, usually resulting in one side or the other accepting a compromise settlement rather than

©2015 Jeremy Barrell. All rights reserved

risk losing in court. The only time a report will be thoroughly tested and examined is if the case actually gets to court, which does not happen very often. This leaves an opening for the unwitting or unscrupulous expert to write a very favourable report for their side, exaggerating the strong and neglecting the weak aspects of their case. This provides their lawyers with a very robust negotiating position, the biased nature of which cannot be properly exposed unless the case goes to court. Of course, this is against all the expert protocols, but the temptation lies in a low risk of being found out, balanced against potentially substantial benefits. If a negotiation report ever does get to court, then the expert is likely to be exposed and will either be forced to concede points or have the judge find against their side, both of which can severely affect case and career prospects. To embark on writing a negotiation report is a high-risk strategy, and the recent damning English written judgments are proof that the courts will have no hesitation in condemning those experts who take the risk.

Science or art?

Although scientific in principle, writing experts reports is just as much about artistic values and interpretations as it is about systematic analysis and the application of rigor. Indeed, writing has a very strong parallel with artistic aspirations; if you are lucky, then you may make one perfect creation and I am sure we can all think of plenty of one-hit wonders that did it once and never repeated their success. But, only a very small proportion ever manage to replicate that achievement and turn it into a stream.

Similarly, the perfect report is elusive indeed; it will have no typos or inconsistencies, it will have a completely new analysis to make it original, it will have discovered something that everyone else missed, it will be easy to understand and follow, it will be short and to the point, and it must assist in the delivery of justice as well. I have come close a few times, but never quite made it, so my aspiration is to manage at least one by the time I retire! There are no standout performers in arboriculture yet, but there will be one day and the odds are that he or she is out there now digging up roots and climbing around in crowns, gaining the breadth of experience and wisdom that it takes to get to the top.

More about the author: Jeremy Barrell started his career working for the UK Forest Service in 1978, establishing his own tree contracting business in 1980. In 1995, he started Barrell Tree Consultancy, which is now one of the UK's largest arboricultural practices, working predominantly in London. He heads a team of six consultants specialising in the legal and planning aspects of urban tree management. Jeremy is a prolific public speaker and has authored numerous papers and articles on tree management. He is an accomplished expert witness in the field of risk management, focused on using his extensive practical background to bring a common sense perspective to providing expert evidence.

©2015 Jeremy Barrell. All rights reserved

Panel insert on CPR Part 35

For England and Wales, the Ministry of Justice, provides guidance on how expert witnesses should behave and write, which applies to all disciplines, including arboriculture. The Civil Procedure Rules Part 35 and its associated Practice Direction sets out the broad protocols (http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part35/pd_part35). Additionally, the Civil Justice Council's publication, *Guidance for the instruction of experts in civil claims 2014* (https://www.judiciary.gov.uk/wp-content/uploads/2014/08/experts-guidance-cjc-aug-14-amended1.pdf), provides further detailed explanations on standards of professional conduct. Although written for England and Wales, these principles are often relevant, wherever you practice.

Panel insert on HSE SIM

The Government Regulator for Health & Safety in England, The Health & Safety Executive, has published guidance on tree safety management for its accident inspectors, which is particularly relevant to tree managers and duty holders alike. *Management of the risk from falling trees and branches* can be downloaded at http://www.hse.gov.uk/foi/internalops/sims/ag_food/010705.htm. It was first published in 2007 and updated in 2013. Although written in a British context, the broad principles of its content are likely to be of relevance, wherever tree risk management is an issue.

©2015 Jeremy Barrell. All rights reserved